

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE**

KOVA BRISTOL TENN 1894, LLC,)	
A Florida Limited Liability Company,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 2:19-cv-00084
)	
BRISTOL PRESERVATION, LLC,)	
A Tennessee Limited Liability Company,)	
)	
Defendant.)	

**MOTION FOR LEAVE TO FILE AFFIDAVIT OF DWIGHT E. TARWATER ON THE
ISSUE OF BRISTOL PRESERVATION’S ATTORNEYS’ FEES UNDER SEAL**

Bristol Preservation, LLC (“Bristol Preservation”), through counsel, respectfully requests that the affidavit of its counsel Dwight E. Tarwater of Paine, Tarwater & Bickers, LLP discussing attorneys’ fees and expenses incurred by Bristol Preservation in this matter and its attachments, be filed under seal and be reviewed by the Court in-camera in this matter.

Courts have discretion to seal records and documents after balancing the competing needs and interests of litigants, the public, and pertinent non-parties. *See In Re Southeastern Milk Antitrust Litig.*, 666 F.Supp.2d 908, 916 (E.D. Tenn. 2009) (citing *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1179 (6th Cir. 1983). Pursuant to Local Rule 26.2(b), court documents shall not be placed under seal absent a showing of “good cause.” L.R. 26.2(b).

Here, the affidavit of Bristol Preservation’s counsel contains sensitive and private personal financial information of Bristol Preservation that could be harmful and reveal circumstances surrounding Bristol Preservation’s financial status if released to the public. This information includes the amounts that have been charged to Bristol Preservation by counsel during the course

of this action and all amounts that have been paid by Bristol Preservation to date. If made public, this information could injure Bristol Preservation by openly revealing its financial status and the expense it suffered due to KOVA's failures in this matter. Additionally, if released, this information could harm Bristol Preservation's business reputation. Bristol Preservation could suffer competitive disadvantage and irreparable harm if this confidential information is publicly available to its competitors and the marketplace. The release of this information could also cast a shadow on future Bristol Preservation business endeavors.

Additionally, the engagement letter and the Paine, Tarwater & Bickers, LLP invoices attached to the affidavit specifically delineate and describe discussions occurring between Bristol Preservation and counsel and all actions taken by counsel on Bristol Preservation's behalf. This letter and these descriptions reflect the thoughts and advice of counsel given to the client, Bristol Preservation, during the pendency of this matter. This information is protected by the attorney-client privilege and should not be publicly revealed in the record or made available to KOVA. *See Upjohn Co. v. United States*, 449 U.S. 383 (1981) (discussing attorney client privilege protecting communications between client and counsel).

Upon the filing of this motion and the Affidavit in Support of Attorneys' Fees, Bristol Preservation served a copy of this motion on KOVA and a notice of filing of the affidavit and attachments but did not serve KOVA with a copy of the affidavit or its attachments. A copy of this notice is attached to this Motion as Exhibit A. Bristol Preservation respectfully requests that the affidavit and its attachments be filed under seal and that due to the sensitive nature of the material contained therein, that the Court inspect these materials in-camera and not require that these materials be served upon KOVA.

Respectfully submitted this 27th day of August, 2020.

PAINE | TARWATER | BICKERS, LLP

/s Kendell M. Garrett

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Counsel for Bristol Preservation, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of August, 2020, a copy of the foregoing motion was served on the following via U.S. Mail:

KOVA Bristol Tenn 1894, LLC
9130 Galleria Court, Suite 100
Naples, Florida 34109

/s Kendell M. Garrett